



Northwest Women's Law Center

Advancing legal rights for women

July 9, 2008

VIA ELECTRONIC MAIL

Paulette Avalos
Unemployment Insurance Legislative Unit
Employment Security Department
P.O. Box 9046
Olympia, WA 98507-9046
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Re: Comments on Emergency Rules relating to *Spain* and *Batey* cases

Dear Ms. Avalos:

We are writing on behalf of the Northwest Women's Law Center to provide comments on the Employment Security Department's proposed emergency rules. While we appreciate the Department's efforts to provide additional guidance to workers and employers, we believe the proposed emergency rules are unnecessarily limiting.

As the Department's draft and the July 8, 2008 Issue Brief both note, the Washington Supreme Court held that the Department has discretion to find "good cause" for leaving work for reasons beyond those set out in RCW 50.20.050(2)(b). Historically, prior to ESSB 6097, the Department had the discretion to find good cause based on "compelling personal reasons." See *Ayers v. Dep't of Employment Sec.*, 85 Wn.2d 550, 536 P.2d 610(1975); *In re Bale*, 63 Wn.2d 83, 385 P.2d 545 (1963). Indeed, the Washington Supreme Court in *Spain* and *Batey* cited these cases.

For example, prior to ESSB 6097, courts explicitly approved of the Department's interpretation of "good cause" to allow individuals to obtain unemployment benefits if they were forced to leave work due to marital or domestic responsibilities. See, e.g., *Yamauchi v. Employment Sec. Dep't*, 96 Wn.2d 773, 782, 638 P.2d 1253 (1982). This interpretation ensured that women workers could collect unemployment compensation when their family circumstances forced them to leave their employment. The Department's own study found that the adoption of ESSB 6097 had a disparate, detrimental impact on women. The study found that, in general, all subgroups saw an increase in denials, but women claimants were denied benefits at a higher rate than men, and "domestic or marital responsibility showed the most significant disparity along gender lines." Employment Security Department, *Voluntary Quits* (Dec. 2006).

By attempting to identify only specific, limited circumstances as other factors constituting good cause, the Department's proposed emergency rules fail to recognize the Department's discretion to find other compelling personal reasons – including, but not limited to, spousal transfers – to also constitute “good cause” for leaving work. Instead, subsection (b) of the proposed rule setting out “Other factors constituting good cause” merely adds additional specific categories with very specific requirements to establish “good cause” – without explicitly acknowledging the full breadth of the Department's discretion to determine what is “good cause.” By adding such specific requirements to establish “good cause,” the proposed emergency rules are likely to discourage the liberal interpretation that the Department could lawfully exercise.

Further, the legislature deleted the subsection that had limited the Department to consider only work-connected factors in finding “good cause.” *Compare* RCW 50.20.050(1)(c) (applicable to claims with an effective date before January 4, 2004) *with* RCW 50.20.050(2) (applicable to claims with an effective date after January 4, 2004). Therefore, under the current statute, the Department is not limited to considering “work-connected” factors to find “good cause.”

In sum, we urge the Department to explicitly acknowledge in its emergency rules, as well as in any subsequent rules, that the Department has the discretion to interpret “good cause” to include compelling personal reasons, including transfers due to marital or domestic responsibilities. Because the *Spain/Batey* Court explicitly recognized that the statutory list was not exclusive, rather than simply identifying a few additional, limited circumstances that can constitute “good cause,” the Department should be able to interpret “good cause” as it did prior to ESSB 6097.

We appreciate the opportunity to provide these comments.

Yours truly,

Handwritten signature of Pam Crone in cursive script.

Pam Crone

Handwritten signature of Janet S. Chung in cursive script.

Janet S. Chung